

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

**BOSTON GAS COMPANY d/b/a KEYSPAN ENERGY
DELIVERY NEW ENGLAND**

D.T.E. 03-40

**ATTORNEY GENERAL'S MOTION FOR CLARIFICATION, RECALCULATION, OR
IN THE ALTERNATIVE, FOR RECONSIDERATION**

I. INTRODUCTION

Pursuant to 220 C.M.R. §§ 1.11(9)&(10) and Department of Telecommunications and Energy (“Department”) precedent, the Attorney General seeks clarification, recalculation or, in the alternative, reconsideration, of the Department’s October 31, 2003 decision (“Order”). The Attorney General asks the Department to clarify whether the dollars collected from customers through the new pension reconciliation mechanism shall be contributed to the pension trust fund. The Attorney General seeks recalculation and clarification of the Benefits Other Than Pensions (“PBOP”) transition obligation.

II. STANDARD OF REVIEW

A. Reconsideration

A motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. *Massachusetts Electric Company*, D.P.U. 90-261-B, p. 7 (1991). The Department also may grant reconsideration of previously decided issues when extraordinary circumstances dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision reached

after review and deliberation. *North Attleboro Gas Company*, D.P.U. 94-130-B, p. 2 (1995); *Boston Edison Company*, D.P.U. 90-270-A, pp. 2-3 (1991). A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. *Commonwealth Electric Company*, D.P.U. 92-3C-1A at 3-6 (1995).

B. Clarification

The Department may clarify previously issued orders when an order is silent as to the disposition of a specific issue requiring determination in the order or when the order contains language that is so ambiguous as to leave doubt as to its meaning. *Boston Edison Company*, D.P.U. 92-1A-B, p. 4 (1993). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. *Boston Edison Company*, D.P.U. 90-35-A, p. 3 (1992), citing *Fitchburg Gas & Electric Light Company*, D.P.U. 18296/18297, p. 2 (1976).C.

C. Recalculation

A party may file a motion for recalculation based on an inadvertent error in calculation contained in a Department Order. 220 C.M.R. § 1.11(9). The Department grants motions for recalculation in instances where an Order contains a computational error or if schedules in the Order are inconsistent with the findings and conclusions contained in the body of the Order. Western Massachusetts Electric Company, D.P.U. 89-255-A at 4 (1990); Essex County Gas Company, D.P.U. 87-59-A at 1-2 (1988).

III. ARGUMENT

A. Funding Of The Pension Trusts

The Company based its request for a general increase in rates in this proceeding in part on the desire “to provide for the recovery of costs associated with the Company’s obligation to provide its employees with pension benefits and post retirement benefits other than pensions.” Exh. KEDNE-JFB-1, p. 28. In response, the Department approved a mechanism to reconcile pension and PBOP expense amounts. The Department’s Order, however, is silent on the issue of whether Boston Gas will be required to deposit all the additional funds collected through the new reconciling mechanism into its pension fund.

The Company should use the amounts collected with the new reconciling mechanism only to fund the pension trust. See *e.g.*, *Cambridge Electric Light Company / Commonwealth Electric Company*, D.T.E. 99-90-C, p. 83 (2001) (requiring the Companies to deposit that portion of the transition charge proceeds associated with FAS 87 and FAS 106 obligations into trust funds designated for those purposes). See also *Boston Edison Company, D.P.U. 96-23 (1998)* (approving “Restructuring Settlement Agreement”, p. 233, requiring the Company to make cash contributions to the respective trust funds for the FAS 106 and FAS 87 obligations as rapidly as permitted under tax law up to the level of revenues collected for this purpose). “Any revenues associated with these obligations that cannot be immediately funded shall be put into a separate account on the books to be reserved with carrying charges at the rate provided in Section 1.2 until tax deductible funding becomes possible.” Restructuring Settlement Agreement, p. 233. This restriction would allow employees, as well as customers, to participate fully in any benefits that may accompany improvements to the stock market and a rise in interest

rates. Allowing the Company to use funds collected for other purposes would be an inappropriate use of this new reconciling device. In order for the reconciling mechanism to meet the pension obligations to the Company's workers, the Department should clarify that the Company must deposit all funds recovered through the new tariffs into the pension trust.

B. PBOP Transition Obligation Recalculation And Clarification

As part of its pension reconciling mechanism proposal, the Company sought to accelerate the amortization of the \$44 million PBOP transition obligation amount remaining on December 31, 2002, down to ten years. Order, pp 312-313. Under its reconciliation proposal, the Company would have collected approximately \$4.4 million per year through the reconciling mechanism beginning on November 1, 2003 for the next ten years. *Id.* In its Order, however, the Department denied recovery of the PBOP transition obligation through the reconciliation mechanism and ordered the Company to continue to recover its PBOP and PBOP transition costs through base rates.

The Department should clarify that it did not approve the Company's proposal to accelerate its recovery of the transition obligation to ten years, since there is no language in the body of the Order supporting that acceleration. Then, the Department should remove the \$4.4 million adjustment it inadvertently made to the cost of service and recalculate rates based on the lower revenue requirement. If, notwithstanding its silence, the Department intended to approve the acceleration of the transition obligation recovery, then the Attorney General asks for recalculation of the revenue requirement to compensate for the transition obligation recovery already included in the test year cost of service.

In the cost of service schedules attached to the Order, the Department added the \$4.4 million to the cost of service in Schedule 1 “REVENUE REQUIREMENT AND CALCULATION OF REVENUE INCREASE,” line entitled “Post Retirement Other Than Pension” Order, p. 512. “According to the Company, the amortization of the PBOP transition obligation costs is currently included in its base rates.” Order, p. 313. During cross-examination from the bench, the Company’s witness, Mr. Bodanza, testified that the Company had amortized between \$2.5 million and \$3.0 million of the regulatory asset during the test year in this case. Tr. 13, p. 1689. If the Department has accepted the Company’s request to amortize the \$44 million regulatory asset over ten years and continued to allow recovery of PBOP and PBOP transition costs in base rates, then the Department should recalculate the pro forma adjustment to rates in the amount of the difference between the \$4.4 million annual amortization and the actual amount in the test year cost of service, \$2.5 million or \$3.0 million. The line “Post Retirement Other Than Pension,” Order, p. 512, should have a value of between \$1.4 million or \$1.9 million depending on what is in base rates. To permit the full \$4.4 million adjustment as put forth in the Department’s cost of service schedules allows the Company to accelerate its recovery faster than asked for in its general rate case petition. Instead of recovering \$4.4 million per year over the ten-year rate plan, the Company would recover as much as \$7.4 million (\$4.4 million plus \$3.0 million) per year for a total of \$74 million. The Department’s pro forma adjustment to the cost of service would provide a windfall to shareholders in the last three years of the ten-year price cap plan when the regulatory asset would be fully amortized.

The Attorney General asks for recalculation to remove the test year amount of the

amortization from the \$4.4 million pro forma cost of service adjustment that the Department has in its cost of service schedules. This request is appropriate because (1) the adjustment is consistent with the plain language of the Order; (2) this adjustment is all that the Company requested; and (3) the resulting amount that would fairly allow the Company to collect only that amount which was deferred, preventing its shareholders from receiving a windfall at the expense of customers.

IV. CONCLUSION

For these reasons, the Department should allow this motion to clarify and recalculate, or in the alternative, reconsider, the issues raised in this motion and grant the relief requested.

Respectfully Submitted,

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